

**BEFORE THE APPEALS BOARD
FOR THE
KANSAS DIVISION OF WORKERS COMPENSATION**

SHAUN GLIDDEN

Claimant

VS.

MORTON COUNTY EMS

Respondent

AND

KANSAS WORKERS RISK COOP FOR COUNTIES

Insurance Carrier

Docket No. 255,289

ORDER

Respondent appeals a preliminary hearing Order entered by Administrative Law Judge Pamela J. Fuller on July 6, 2000.

ISSUES

The Administrative Law Judge ordered respondent to pay preliminary benefits. On appeal, respondent argues the Order exceeded the ALJ's jurisdiction because claimant's injury did not arise out of and in the course of his employment.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

After reviewing the record and considering the arguments, the Appeals Board concludes the Order should be affirmed.

Claimant testified he injured his back and left knee when he fell while washing an ambulance. According to claimant, he fell when stepping from the top of the ambulance to an adjacent ladder. Respondent contends the injury did not occur as claimant says it did and cites several factors in support of that conclusion.

Respondent suggests there is an alternative explanation for claimant's current injury. Respondent points out claimant had a back injury, including herniated discs at L4-5 and L5-S1 levels, before his accident. Claimant had injured his back in 1997 and again in 1998. The herniated discs were diagnosed in August 1998. Claimant did not disclose these on his application for employment or in an interview after this alleged accident. Claimant did mention these injuries to health care providers who saw him after this alleged accident.

Respondent identifies several factors that, according to respondent, make claimant's description of the accident implausible. Claimant testified the accident occurred on a Sunday.

Respondent has introduced evidence indicating it was unusual for claimant to work on Sunday. Respondent has also introduced pictures of the ladder next to the ambulance to show how obviously awkward the arrangement would be. Respondent has introduced other evidence indicating that this was not the usual way to wash the top of the ambulance. One of respondent's representatives saw claimant shortly after the accident and testified claimant's knee, where he testified he fell, was not swollen and the appearance was not consistent with the alleged accident.

Finally, respondent has introduced an additional motive for claimant to allege an injury. Respondent contends claimant had volunteered for the Army but had become nervous about actually going into the Army. According to respondent, claimant missed work the Friday before this Sunday accident because he was so nervous about joining the Army. Respondent's representative testified the first thing claimant said was that he would not be able to go into the Army now.

In spite of these suspicious circumstances, the Board agrees to affirm the decision. Claimant testified that after the 1998 back injury he had no restrictions. He had not had problems with his back and, except for a few later chiropractic treatments, had not sought any medical care. He was able to fully perform the duties of his job with respondent. He had, in fact, passed the physical for the Army.

Claimant had worked on Sunday before. Although the use of the ladder is, as respondent argues, an unusual way to wash the top of the ambulance, it is also a method that could easily produce a fall. Claimant was hospitalized for three days after the accident and the medical evidence indicates he is now not able to perform his work for respondent. The records from the emergency room show not only a bruise on the knee but an abrasion. Claimant testified, and respondent's superior acknowledged, claimant did not say he did not want to go into the Army. Claimant testified his mother was concerned about this decision to join the Army.

Finally, the Board notes the ALJ had the advantage of observing the witnesses testify. She accepted claimant's testimony and awarded benefits. The Board gives some deference to the ALJ's evaluation of the credibility of witnesses who appeared before her. This factor tips the balance in favor of affirming the Order in this case.

WHEREFORE, it is the finding, decision, and order of the Appeals Board that the preliminary hearing Order entered by Administrative Law Judge Pamela J. Fuller on July 6, 2000, should be, and the same is hereby, affirmed.

IT IS SO ORDERED.

Dated this ____ day of September 2000.

BOARD MEMBER

c: Shirla R. McQueen, Liberal, KS

James A. Cline, Wichita, KS
Pamela J. Fuller, Administrative Law Judge
Philip S. Harness, Director